

STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES
GUIDELINES FOR SUBMITTING PERMIT APPLICATIONS
FOR ACCESS TO THE
NORTHWESTERN HAWAIIAN ISLANDS STATE MARINE REFUGE

A. INTRODUCTION

Hawai'i Administrative Rules, Chapter 60.5, Northwestern Hawaiian Islands Marine Refuge, provides rules for the establishment and management of the Marine Refuge in the Northwestern Hawaiian Islands. The authority to establish this Marine Refuge is Title 13, Department of Land and Natural Resource, Subtitle 4, Fisheries, Part II Marine Fisheries Management Areas and Chapter 188.53 Hawaii Revised Statutes. The Hawai'i Department of Land and Natural Resources requires a permit for entry into State waters surrounding the Northwestern Hawaiian Islands. A permit is also required for any activity which has the possibility of negatively impacting marine resources (either through extraction or disturbance) of the area.

It is important to note that State marine refuge permits issued by the Board of Land and Natural Resources allow entry into state waters only (0-3nm), and do not confer any right of entry on to emergent land in the Northwest Hawaiian Islands. For entry on to land and near-shore waters overlapping State jurisdiction, a separate permit is required from the U. S. Fish and Wildlife Service. For entry on to land at Kure Atoll Wildlife Sanctuary, a permit from the State Division of Forestry and Wildlife is required.

The following guidelines provide information on the State's Northwestern Hawaiian Islands Marine Refuge ("the NWHI Marine Refuge") permitting process and should be read in conjunction with the Refuge rules. Official copies of the Refuge rules can be obtained from the Division of Aquatic Resources, DLNR, 1151 Punchbowl Street, Room 330, Honolulu, Hawaii 96813, or from the DLNR website: www.hawaii.gov/dlnr/dar

The Department established a marine refuge in the NWHI for the long-term conservation and protection of the unique coral reef ecosystems and the related marine resources and species, to ensure their conservation and natural character for present and future generations. The primary goal of the NWHI Marine Refuge is resource preservation, with the specific objectives of preserving and protecting unique habitats, conserving biodiversity, restoring natural communities, and avoiding human impacts. The Refuge will be managed using the best available science and a precautionary management approach to resource protection to minimize risks of possible adverse effects on the regional ecosystem, its biodiversity or its indigenous wildlife in this area, especially where data is limited. DLNR is implementing an entry permit program for the area that will cause no harm to the refuge resources and be consistent with the management programs in the adjacent National Wildlife Refuge and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve for this area, that preserves the area by limiting entries and restricting access to specific areas. In addition, the Refuge allows Native Hawaiian cultural, subsistence, and religious practices that are consistent with the applicable law and the long-term conservation and protection of the resources of the marine refuge. The refuge is also intended to support, promote and coordinate appropriate

scientific research and assessment, and long-term monitoring of the refuge resources, and the impacts of threats thereto from human and other activities, to help better understand, protect and conserve the NWHI.

It is unlawful for any person to enter the refuge without a permit issued pursuant to Section 13-60.5-6. Permits will be issued by the Board of Land and Natural Resources (“the Board”) in accordance with the criteria outlined in the Chapter 60.5 Rule and these guidelines.

The applicant may also need additional **State** permits as follows:

- State Wildlife Sanctuary entry permit for Kure Atoll Wildlife Sanctuary from DLNR, Division of Forestry and Wildlife under HRS Title 13, Chapter 125.
- Archaeological Permit under DLNR, Historic Preservation Division, Chapter 12-276 Hawai’i Administrative Rules, entitled “Rules governing Standards for Archaeological Inventory Surveys and Reports”.
- Film permit from the State Film Office, Department of Business, Economic Development and Tourism (DBEDT). The Hawaii Film Office (DBEDT) requires film permits for all filming activities, commercial or non-commercial, that take place on State-administered lands and/or Conservation-zoned lands, including the NWHI Marine Refuge.

In addition to the State permits listed above, other Federal permits may be required.

B. TYPES OF STATE REFUGE PERMITS

Persons shall only enter the refuge to engage in activities that do no harm and do not degrade the coral reef ecosystem, and the related marine resources and species, as specifically authorized. Permits may be issued for the following three purposes:

- Scientific research and education
- Native Hawaiian traditional, and/or customary, practices consistent with the long-term preservation of the Refuge resources
- Special activities (other non-extractive purposes consistent with the rules)

Permits enable access for people:

- To enter the NWHI Marine Refuge; and
- To engage in legitimate activities.

The State’s permit program ensures that such activities are carried out in a precautionary manner that safeguards the Refuge ecosystems, ensuring their conservation and natural character which might be incidentally affected by scientific, educational, special (non-extractive purposes), or cultural activities.

The following criteria will apply to **all** types of permit applications:

- The activity must be non-commercial and will not involve the sale of any organism, byproduct, or material collected;
- Resources and samples are a public trust, not to be used for sale, patent, bioassay, or bio-prospecting, or for obtaining patents or intellectual property rights;

- The activity must have demonstrable benefits to the preservation and management of the Northwestern Hawaiian Islands ecosystem;
- The activity must do no harm to the ecological or biological systems, sites or resources of the NWHI, or by virtue of the mode of transport to be employed for access.
- The activity must have demonstrable benefits to the cultural and spiritual relationship of Native Hawaiians to the Northwestern Hawaiian Islands ecosystem;
- The activity must support the perpetuation of traditional knowledge and ancestral connections of the Native Hawaiians to the Northwestern Hawaiian Islands.

Permits to access the NWHI State Marine Refuge may be issued to applicants under the following categories or types.

1. Scientific Research, Monitoring and Education Permits

Research permits may be issued to researchers affiliated with government agencies, non-governmental organizations (NGOs), or accredited scientific institutions for appropriate scientific research activities within the Refuge. Permits may be denied for entry to certain areas if it is determined that such locations would benefit from complete protection. Only research proposals that are designed to enhance scientific understanding of the Refuge, investigate links between the Main Hawaiian Islands and the NWHI, gather data for global analyses of atmospheric and oceanographic processes, or improve resource management within the Refuge will be considered.

Permits may allow for researchers to collect specific species whether they be regulated species as authorized under Chapter 187A-6 Hawai'i Revised Statutes or not.

Education permits for access to the Refuge will be considered for activities that further the educational value of the Refuge, enhance the understanding of NWHI ecosystems and resources, improve resource management, promote Native Hawaiian knowledge and values in relation to the Northwestern Hawaiian Islands, or assist in the development and implementation of enforcement and compliance strategies.

The protection of historically significant wreck sites in the NWHI is a management priority, and unscheduled or unapproved visits to sensitive archaeological sites in the NWHI Marine Refuge are prohibited without a permit. Site locations are considered to be sensitive information, and not subject to public release (exempted from the Freedom of Information Act) when disclosure could pose a threat to the site. Visits to historically significant wrecks in the NWHI will only be conducted during approved scientific missions, when archaeologists can provide interpretation to interested researchers and crews, monitor any potential inadvertent site impacts, and assist ships and crews in placing emphasis on site protection and preservation protocols.

2. Native Hawaiian Practice Permits

The Chapter 60.5, Northwestern Hawaiian Islands Marine Refuge Rule intends to:

“allow Native Hawaiian cultural, subsistence and religious practices, and identification and coordination of Native Hawaiian interests, that are consistent with applicable law and the long-term conservation and protection of the resources of the marine refuge.”

In keeping with the above, the NWHI Marine Refuge may provide access permits to Native Hawaiians for subsistence, traditional and customary practices consistent with the long-term preservation of the Refuge resources and in accordance with permit conditions. Permits may be denied for entry to certain areas if it is determined that such locations would benefit from complete protection.

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i.

Native Hawaiian Subsistence means the use of natural and heritage resources by Native Hawaiians for the purposes of perpetuating traditional knowledge; taking responsibility for and understanding how to *malama honua* (care for the earth); and strengthening cultural and spiritual connections to the NWHI. Resources extracted for Native Hawaiian Subsistence will be used only for direct personal consumption while in the Refuge and cannot be exported from the refuge or sold. Allowable methods for subsistence fishing are limited to handline, pole-and-line or hand-held spear. Fishing by use of nets, scuba gear or spear guns is prohibited. Organisms allowed for subsistence use must be listed on an approved permit by name, method of capture to be used, specific site(s) of activity, and total numbers of each species to be sought at each site.

3. Special Activity Permits

Special activity permits will cover an activity not directly addressed by the Research and Education or Native Hawaiian Practice permits described above, or for activities related to the general management of Refuge resources and/or users. Such special activities must provide a demonstrable benefit to the Refuge, and may include: restoration or remediation of degraded or damaged resources; marine debris cleanup and removal; filming of documentaries; activities of volunteer groups solicited by the Department to assist; and resource management of tourism, recreational and commercial activities, so as to prevent degradation of resources or diminishment of the natural character of the Refuge.

C. THE PERMIT APPLICATION PROCESS

A permit from the Board of Land and Natural Resources is required for every person who wishes to enter the NWHI Marine Refuge. The permit applies to all scientific research, educational, cultural activities, or other special activities as described above.

All applicants shall complete the attached application form (Appendix I).

Deadlines

Permits will only be issued on a seasonal basis twice a year. Permit applications must be submitted by the following deadlines each year:

February 1 -- for the Summer (May–July)
May 1 -- for the Fall (August–November)

Under certain circumstances applications may be considered under an out-of-time application process. This will only apply if there are exceptional circumstances that prevent the applicant from adhering to the normal application deadlines.

Three (3) signed, hard copies and one completed electronic copy of the application for a permit shall be submitted to DLNR, Division of Aquatic Resources before the application deadline to allow sufficient time for review, evaluation, and processing. If additional time is required for review, the applicant will be notified within 20 days of the receipt of the permit application. DLNR may consider charging a fee in the future to cover staff review and permit preparation costs.

General Requirements

The permit application shall be submitted by the Project Leader (i.e. the person in charge of the research/education project, or other activity) and the permit will be awarded to this person only. The Project Leader will also be held legally responsible for the actions and impacts incurred as a result of the activity. A permit will not be issued to an organization or institution. All assistants, students and/or employees involved in the project must be listed on the permit; this includes **all** crew members and any other individuals entering the NWHI Marine Reserve on the mode of transport covered under this permit. Subsequent substitutions of personnel are prohibited unless cleared in advance with DLNR prior to the start of the project.

All non-government applicants must show proof of wreck removal and pollution insurance. All applicants shall demonstrate their capability of providing DLNR with the opportunity to track their overall location while within the Refuge (e.g. GPS, VMS, and communications tools including email or satellite phone). All applicants must provide DLNR with a continuous GPS track upon their return.

Any activity involving an organism protected under Federal law must have prior written approval from the relevant Federal agency and must accompany the permit application; relevant applications lacking such documents will not be processed. The Department reserves the right to limit the number, type, or amount of any organisms allowed to be collected or disturbed in any way, under any given permit.

D. THE PERMIT ASSESSMENT PROCESS

All permit applications will undergo the same review process. Completed permit applications filed with DLNR will be evaluated through the following process:

- The State NWHI Marine Refuge Permit Coordinator will initially review the application for completeness and compliance with application guidelines.
- The application will then be assessed by DLNR's NWHI Permit Review Committee.¹
- Incomplete applications will not be processed. If applications are incomplete, or if there is ambiguity in regard to a proposed project's goals and objectives, applicants will be contacted for clarification.

Completed permit applications filed with DLNR will be initially evaluated and classified using the following criteria:

- Relevance or importance of the proposed project to the NWHI Marine Refuge;

¹ Representatives such as the following may serve on the Committee: DLNR (DAR, DOFAW, OCCL, Historic Preservation); Office of Hawaiian Affairs; Department of Education; NOAA (NMSP, NMFS-Protected Species Program); USFWS; UH Cooperative Fisheries Research Unit, and Native Hawaiian advisors.
February 24, 2006

- How the project will benefit management of the NWHI Marine Refuge and the greater Northwestern Hawaiian Islands ecosystem, and/or Hawaiian archipelago;
- Whether the proposed project could be conducted outside the NWHI Marine Refuge;
- Scientific, educational or cultural merits of the project;
- Potential cumulative impacts of the project;
- Whether the project will cause harm to the ecosystem;
- Whether the project will provide information that can assist in improving or facilitating direct management actions in either the NWHI or the MHI;
- Whether the applicant has had a previous permit revoked;
- Comments received from other relevant agencies involved in management of the NWHI.

Permit Decision

When the initial assessment process has been completed the application will be submitted to the Board of the Department of Land and Natural Resources prior to their next meeting for placement on the agenda. There will be opportunity for public comment during the Board hearing process. At the time of submission to the Board, the permit application will also be posted on the DLNR website. If the permit is approved by the Board it will be processed within 14 working days.

The submission of an application to DLNR or receipt of public comments to DLNR shall not obligate the department to issue a permit or constitute a right on the part of an applicant to receive a permit or to enter the NWHI Marine Reserve.

DLNR will advise applicants on the outcome of their application and if approved, will issue a permit for a limited term (normally 6 months, but not longer than one year).

If a permit application is declined, the applicant will be notified of the reason(s) for denial and may be given an opportunity to re-apply, at the discretion of the Board.

E. CONDITIONS OF PERMITS

- Permit holders shall counter-sign the issued permit and return copies to DLNR prior to conducting the permitted activities. Copies must be signed and returned to DLNR before departure.
- All personnel covered under the permit must be listed and must agree to abide by the permit conditions.
- Permits must be carried aboard vessels and made available on request for inspection by DLNR or USFWS Refuge or Enforcement personnel. For in-water activities, it is recommended that a copy of the permit be laminated and available for display at all times, in addition to copies held by personnel and aboard the major form of transport into the Reserve.
- All private vessels used to access the NWHI Marine Refuge must carry a minimum amount of Wreck Removal and Pollution insurance, specifically targeted and sufficient to provide for the vessel's full extraction and removal from the NWHI should it run aground

or experience difficulties. The extraction method used must meet with the approval of DLNR and any other appropriate State or Federal resource trustees.

- Any vessel causing damage to marine resources within the refuge may be subject to citation from DLNR and fines from the Board of Land and Natural Resources.
- All vessels used to access the NWHI Marine Refuge must conduct a hull inspection, and must remove any potentially invasive hull fouling organisms detected during this inspection, prior to entry into the Reserve. If a vessel employs ballast tanks or sea chests, these must also be inspected for invasive species prior to entry into the Refuge. A copy of the inspection report(s) and proof of any remedial action(s) taken to remedy identified concerns must be provided to DLNR prior to entry into the Refuge. This hull and/or ballast water inspection and any associated cleaning requirements are the vessel owner's responsibility and must be carried out at their expense.
- Recent concerns over the proliferation of alien algae in the main Hawaiian Islands have resulted in the need for a strong effort on the part of any visitor that conducts activities in the pristine waters of the NWHI to insure that they do not serve as vectors for the accidental introduction of these species. The minimum successful fragmentation size for at least two of the concerned algal species is less than 1 cm. DLNR requires that all activities in State waters in the NWHI take all steps necessary to eliminate the possibility of accidentally transferring these (and other) harmful species into new ecosystems where they might gain a foothold. As such, DLNR has developed a set of requirements for all divers/snorkelers to follow prior to departure for the NWHI:
 - Unzip and open all pockets on buoyancy compensators, dive bags and wet suits.
 - Submerge and soak all dive gear (including dive bags) and transecting gear for a minimum of 24 hours in 100% fresh water.
 - Thoroughly dry and then visually inspect all gear prior to departure.
 - Any algal pieces must be removed and discarded prior to departure.
- All dive boats (inflatables, whalers), engines, anchor lines, etc, used in the main Hawaiian Islands (and especially within Kane'ohē Bay or other parts of O'ahu, or West or South Maui) need to be visually inspected for any algal remnants which must be removed prior to departure. This inspection is in addition to the overall vessel inspection mentioned above.
- The same procedure above is required of all expeditions traveling to multiple islands within the NWHI. If drying and inspection occur after departure then the algal pieces must be retained in sealed containers until they can be disposed of back on O'ahu. Extreme care must be taken to kill these specimens (freshwater soak for 24 hours followed by drying and placement in sealed containers) during transport.
- Protocols and mechanisms for shading excessive light at night on-board the transport vessel will be presented to DLNR prior to departure to minimize the risk of strikes by protected seabirds while the transport vessel is anchored at night in the vicinity of any island or islet within the NWHI.

- Written approval must be obtained from the DLNR prior to:
 - 1) Transfer or donation of any collections under this permit to any other party;
 - 2) Transporting any live organism collected in the NWHI (regulated or not) between MHI islands, or outside of the State.
- All participants (including crew) in a permitted activity or aboard a permitted mode of transport will abide by the non-harassment of protected and unique marine wildlife policy. This includes staying away from Hawaiian monk seals and sea turtles, and minimize disturbance to assemblages of large apex predators such as jacks, sharks or grouper.
- In accordance with Federal and State Laws, there will be no intentional release of sewage from the transport vessel during the permitted expedition. All sewage will be held in a proper storage tank until it can be off-loaded to proper handling facilities.
- Tenders will be outfitted with EPA omissions approved outboard engines that meet the latest environmental standards.
- Refueling of tenders and all small vessels will be done at the mother ship and outside the confines of the lagoons or near-shore waters.
- Tender and dive vessels will operate at slow speed and with a bow lookout in shallow water NWHI coral reef areas in order to minimize prop or bow damage to three dimensional coral reef habitat or endangered monk seals or sea turtles.
- **Anchoring**
 - Permitted Transport Vessel
It is illegal to anchor on living coral reef areas in the NWHI. Transport vessels will endeavor to anchor as far offshore as possible and will try to pre-determine anchorages prior to departure.
 - Tenders and Dive Vessels
It is illegal to anchor on living coral reef areas in the NWHI while conducting inshore operations. In those areas where anchoring needs to occur adjacent to living coral resources, placement and retrieval of the anchor by hand will be done whenever this procedure can be done in a safe and prudent manner.
- For activities involving extraction or collection, DLNR will require documentation of each species targeted at each location be provided for our review after the expedition, including a complete list of all species collected, their specific numbers and location where collected. It is recommended that documentation include pre-collection documentation of the habitat, along with precise GPS of each collection location, which can substantiate the presence of individuals in the numbers suggested by your protocol being present prior to collection activity. The permittee agrees to provide the DLNR access to organisms obtained and held under this permit for on-site inspection.
- Permits are non-transferable. The permit holder must abide by all provisions set out in the permit as well as other applicable regulations.

- Permitted activities must be conducted with adequate safeguards for the environment. To the extent possible, the environment shall be restored to its existing condition prior to the cessation of the permitted activity.
- The permit holder shall be responsible for the safety and well-being of project personnel. DLNR shall not be liable for any incidents that may occur while permit holders are in the NWHI Marine Refuge.
- Permit holders shall agree to **immediately** report to DLNR observation of any impacts to the marine resources, whether directly caused by their activities or not. This includes observations of activities conducted by other parties along with both natural and anthropogenic events. Permittees provide a valuable role as ‘eyes and ears’ on the water. All recorded observations by permittees will provide additional information and assist with management of the refuge. Such reporting shall include full documentation with notes, logs, photos, GPS, and other information as may be required.
- Permit holders also agree to submit a project report and cruise log to DLNR within 30 days after returning to Honolulu. The project report will be a brief (1-2) page statement summarizing the results of permitted activities. A cruise log shall list the days spent in the Marine Refuge, activities carried out, approximate positions, and general observations. Permit holders must also provide DLNR with project summaries, GPS locations, visuals, technical reports, and/or catch reports (if applicable) for activities undertaken while in the NWHI Marine Refuge as specified in the conditions of their individual permit.
- The issuance of a permit shall not constitute a vested right to receive additional or future permits. There is no right to a renewal or re-issuance of a permit.
- The Board may immediately amend, suspend, or revoke a permit granted pursuant to these guidelines, in whole or in part, temporarily or indefinitely, if the permit holder(s) has acted in violation of the terms of the permit, or for any good cause shown. Formal notice of such action shall be subsequently communicated in writing to the permit holder and shall set forth the reason for the action taken. Any verbal notification from a Board representative of a violation will also result in immediate cessation of all activities within the Reserve.

F. AMENDMENTS TO ACTIVE PERMITS

- Requests for amendments to active permits (e.g. change in study design or personnel, or other forms of amendment) must conform to the above guidelines.
- Persons desiring to continue permitted activities in the Refuge must re-apply for an extension of his/her current permit 90 days before it expires. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly and all cruise logs and project documentation pertinent to the original permit have been submitted to and approved by DLNR personnel.

G. MONITORING PERFORMANCE

Permitted activities will be monitored to ensure compliance with the conditions of the permit. DLNR personnel may periodically assess work in progress by visiting the study location, observing any permitted activity, contacting the transport vessel or permittees while in the Refuge, by reviewing any required reports, or by conducting unannounced inspections of the transport vessel relative to any permit directive or requirement. DLNR reserves the right to require relevant resource management agency representation on board the vessel. The discovery of any irregularities in conformance to permit conditions shall be promptly reported and appropriate action shall be taken. Permitted activities will be evaluated and the findings used to evaluate future applications. Violation of permit requirements can constitute grounds for immediate permit suspension, revocation, immediate cancellation of approval to be within the Reserve and/or other penalties as provided by law.

H. REPORTING BURDEN

The information requested in these guidelines is necessary to evaluate whether issuance of a permit is appropriate, and will be used to evaluate the potential benefits of the activity, to determine whether the proposed methods will achieve the proposed results, and to evaluate any possible detrimental environmental impacts. Project reports will be used in the Marine Refuge's interpretive programs, and cruise reports will be used in the assessment of the Marine Refuge's activities. It is through this evaluation and the tracking of activities that DLNR is able to use permitting as a management tool to protect NWHI Marine Refuge's unique resources and qualities. It is the responsibility of the permittee to provide the necessary reports to DLNR as agreed to under these permit guidelines.

I. CONTACT INFORMATION

Permit Coordinator
Northwestern Hawaiian Islands State Marine Refuge
Division of Aquatic Resources
Department of Land and Natural Resources
1151 Punchbowl Street, Room 330
Honolulu, Hawai'i 96813
www.hawaii.gov/dlnr/dar

Appendix 1—NWHI State Marine Refuge Application Form (attached separately)

Appendix 2 – Instructions for Application Form (attached separately)

